

The January 22, 2014 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of Town Hall.

Chairman Susanne Murphy called the meeting to order at 6:30 P.M. with the following members present:

Susanne Murphy, Chairman
James M. Stanton, Vice Chairman
Daniel J. Cunningham, Jr., Clerk
Ted C. Case, Member
James S. DeCelle, Member

Matthew Zuker, Associate Member

Ilana Quirk, Town Counsel

6:30 p.m. – Town Counsel – Barberry Homes LLC – Case #21-13

Chairman Murphy declared that under G.L. c.30A, §21A(a)(3), that the purpose of the executive session will be to discuss strategy with respect to pending and potential litigation regarding a project known as “The Residences at Moose Hill, Walpole” which seeks a Comprehensive Permit under Chapter 40B, including, but not limited to, an appeal filed by Barberry Homes, LLC with the Housing Appeals Committee known as Docket No. 2014-01, because a discussion of the litigation strategy in open session could compromise the purpose of the executive session and with the Zoning Board of Appeals to return to open session at the conclusion of the executive session.

A motion was made by Mr. Stanton, seconded by Mr. Cunningham, for the Zoning Board of Appeals to go into executive session, under G.L. c.30A, §21A(a)(3) for the purposes and reasons declared by the Board’s chairman and with the Board to return to open session thereafter.

The vote was **5-0-0 in favor.** (Ms. Murphy – yes; Mr. Stanton – yes; Mr. Cunningham – yes; Mr. Case – yes; Mr. DeCelle – yes)

The Board returned to open session.

7:00 p.m. – Barberry Homes LLC – Case #21-13

Ms. Murphy read the public hearing notice for **BARBERRY HOMES LLC, Case #21-13**, with respect to property located at 272 Moosehill Road, East Walpole and shown on the Assessors Map 36 and Lot Nos. 66, 66-1, 62, Residence A Zone.

The application is for:

A Comprehensive Permit under MGL Ch. 40B to allow construction of 174 unit apartment project containing 25% affordable units on a parcel of land containing 14.33 acres.

The applicant was not present for the hearing.

Ms. Murphy stated that Applicant Barberry Homes LLC wishes to pursue a claim before the Housing Appeals Committee that the Zoning Board of Appeals constructively granted the application for a comprehensive permit by not opening the public hearing on the application within 30 days of receipt by staff for the Zoning Board of Appeals of the application. The Zoning Board of Appeals was informed yesterday that a motion has been filed by the Applicant with the Housing Appeals Committee. The Board met in executive session earlier this evening and authorized Town Counsel to defend against that motion as the Board understands that, under 760 CMR 56.05(3), the thirty day deadline for the Board to open the public hearing runs from “30 days of its receipt of a complete application” and the application is not complete as items required for a complete application under 760 CMR 56.05(2) have not been provided.

Ms. Murphy noted the following missing items:

- The name and the seal of the registered architect who prepared the architectural plans.
- The required existing conditions information regarding Moose Hill Road was not provided. Most particularly, the existing street elevations were not provided.
- The architectural drawings of the buildings are not to scale.
- The scale for the floor plans is not legible.
- The typical elevations and sections were not provided for the architectural plans.
- The construction type for the buildings was not provided.
- The exterior finish information for the buildings was not provided.

In addition, Ms. Murphy said the Applicant did not provide sufficient copies of the application materials, as required by the Board’s regulations, so that the materials could be distributed to the various Town agencies and reviewed in time for memos and reports to be provided to the Board by the time of the opening of the public hearing. She further stated that these circumstances are not all unusual. There often is information missing in an application; however, the Board’s practice is to open the public hearing and to ask for the information and not stand on ceremony and simply refuse to open the public hearing at all.

Ms. Murphy said they understand that the state regulations provide that the requirement to open the public hearing, for purposes of triggering a constructive grant, occurs only when a fully complete application has been received. Ms. Murphy requested that the Board now entertain a motion to authorize her as Chairman, to write to the Applicant and invite the Applicant to provide the missing information and to participate cooperatively in the public hearing process, which would benefit the Applicant, the abutters and the public and avoid the expense and inconvenience of litigation for all parties.

A motion was made by Mr. Stanton, seconded by Mr. Cunningham, to authorize the Chairman to write to the Applicant and invite the Applicant to provide the missing information and to participate cooperatively in the public hearing process, which would benefit the Applicant, the abutters and the public and avoid the expense and inconvenience of litigation for all parties.

The vote was **5-0-0 in favor**. (Murphy, Stanton, Cunningham, Case, DeCelle voting)

Ms. Murphy noted that the Board is ready to proceed with the public hearing this evening on the application and I note, particularly, that the Town hired planning consultant Judi Barrett last week to assist the Board with the public hearing process. The Town Engineer is also present and

the Board would have hoped to have discussed engaging peer review services this evening with the Applicant, so as to move the process along as expeditiously as possible.

Ms. Murphy continued that unless a majority of the Board disagrees, it is my position that the Board is not ready to issue a constructive grant of approval of the project under the circumstances; and, of course, the Board is not ready to deny the comprehensive permit for lack of information or for lack of prosecution because the Board has historically provided every applicant with every reasonable opportunity to provide full information to support an application and to participate cooperatively in the public hearing process. At this point, since the Applicant is not present and is not ready to move forward with the public hearing, I will entertain a motion to continue the public hearing for a period of 45 days, to allow the Applicant to submit the missing materials and time for the Board and the public to review the missing information and to allow a period of time for the HAC proceeding and any other litigation to go forward.

A motion was made by Mr. Stanton, seconded by Mr. Cunningham, to continue the public hearing for 45 days, to allow the Applicant to submit the missing materials and time for the Board and the public to review the missing information and to allow a period of time for the HAC proceeding and any other litigation to go forward.

A resident from 261 Moosehill Road asked how the abutters will know whether the Town will be sending a letter to the Applicant to request that they come before the Board within 45 days. And how will the abutters know what the date is.

Town Counsel Quirk responded that the letter will be part of the record and will also go into the file. It will be submitted into evidence.

The resident from 261 Moosehill Road asked when was the Applicant notified that their application was not completed, was it within the 30 days permitted?

Ms. Angela Moore of 237 Moosehill Road asked why the Applicant is not here today.

Town Counsel Quirk responded that there is no requirement that the Board reach out before the public hearing.

Mr. Tom Rossato of 6 Orchard Drive asked how abutters could get a set of plans.

Town Counsel Quirk responded that to obtain a copy of the application is to make a request of the ZBA.

Mr. Joe Moraski of 3 Buckboard Drive asked when the application was received by them and are copies available for the public for full scrutinization.

Ms. Dawn Leonard of East Walpole asked when you submit an application, is there a list of requirements.

Town Counsel responded yes, we supplied the rules and guidelines.

Ms. Moore of 237 Moosehill Road stated that the neighbors appealed the ANRAD with the Conservation Commission and there is also litigation with one of the neighbors.

Town Counsel Quirk responded that they cannot comment on litigation she has not seen. This project has a good deal of complexity to it.

Mr. Brian Atkinson of 301 Moosehill Road asked is the submitted application considered complete.

Ms. Laura Vaites of 12 Johnson Drive asked with the pending appeal with MA DEP, would it be necessary to start this project over again.

Town Counsel Quirk responded that the developer could attend the present public hearing. A whole new hearing would be required should there be substantial changes.

Mr. Clifton Snuffer of 15 Hummingbird Lane requested that the Board have microphones with them for the next hearing.

A resident of 5 Johnson Drive asked who decides if changes are insignificant or substantial.

Town Counsel Quirk responded that the Zoning Board of Appeals has Chapter 40B regulations as guidance.

Mr. Moraski of 3 Buckboard Drive said that he attended two Sewer & Water Commission hearings where Barberry Homes requested waivers. Could the state overrule the 30 day requirement?

Town Counsel Quirk responded that the applicant can ask for waivers from any of the Boards. The 30 day requirement is for the Board of Appeals to open its hearing on a comprehensive permit application.

The applicant can ask for waivers from any of the Boards and they would ask their waivers be granted.

A motion was made by Mr. Stanton, seconded by Mr. Cunningham, to continue the public hearing to Wednesday, March 5, 2014 at 7:00p.m.

The vote was **5-0-0 in favor.** (Murphy, Stanton, Cunningham, Case, DeCelle voting)

6:55 p.m. – Lot 5A – Route 1 Realty Trust – Case #01-14 (cont'd without testimony from 2/12/14) (Stanton, Cunningham, Case, DeCelle, Zuker)

Ms. Murphy recused herself from the public hearing.

Mr. Stanton explained to the applicant's engineer that Mr. Case and Mr. DeCelle were not present for the meeting and Ms. Murphy has recused herself, therefore, the Board has only three members available to vote and could not proceed with the hearing.

A motion was made by Mr. Stanton, seconded by Mr. Zuker, to continue the hearing to March 26, 2014 at 9:00 p.m.

The vote was **3-0-0 in favor**. (Stanton, Cunningham, Zuker voting)

7:30 p.m. – Mark Carreiro – Case #22-13

Ms. Murphy read the public hearing notice for **MARK CARREIRO, Case #22-13**, with respect to property located at 5 Norfolk Street, Walpole and shown on the Assessors Map 41 and Lot No. 155, Residence B Zone.

The application is for:

A Variance from Section 6C.8D. of the Zoning Bylaw to allow a 6 foot fence closer than the required 15 foot setback from the property line.

Mr. Mark Carreiro was present and explained his need for the variance for the fence. He stated that the fence is necessary due to the bad intersection where the property is located and traffic.

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to grant a Variance from Section 6C.8D. of the Zoning Bylaws to allow a 6 foot fence closer than the required 15 foot setback from the property line.

The vote was **5-0-0 in favor**; therefore the application for **VARIANCE** is hereby **granted as shown on the plan dated December 11, 2013, subject to the following conditions**: (Murphy, Stanton, Cunningham, Case, DeCelle voting)

CONDITIONS:

1. As stipulated by the applicant at the public hearing, construction shall be pursuant to the plans dated December 11, 2013 submitted at the public hearing.
2. This Variance shall lapse within one year, which shall not include such time required to pursue or await the determination of an appeal under G.L.c.40A, Section 17, if substantial use has not sooner commenced except for good cause.

REASONS FOR DECISION:

It is the finding of the Board that the applicant was able to meet the requirements of Section 2.3 of the Zoning Bylaws.

1. *Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the appellant or petitioner.*

The Board finds that the applicant has shown substantial hardship due to the topography and shape of the parcel.

2. *Desirable relief may be granted without substantial detriment to the public good.*

The Board finds that desirable relief may be granted without substantial detriment to the public good.

3. *Relief may be granted without nullifying or derogating from the intent or purpose of this bylaw.*

The Board finds that relief may be granted without nullifying or derogating from the intent or purpose of this bylaw.

There being no further business, the meeting adjourned at 9:00 p.m.

Craig W. Hiltz
Clerk

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Minutes were approved on May 28, 2014.